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## BOOK REVIEWS.

THE PRINCIPLES OF THE AMERICAN LAW OF CONTRACTS AT LAW AND IN EQUITY (Second Edition). By JOHN D. LAWSON, LL.D., Dean of the Department of Law and Professor of Contract and International Law in the University of Missouri, etc. St. Louis: The F. H. Thomas Law Book Co. 1905. Pp. xxv., 688.

This book deserves to rank among the leading elementary American text books on the Law of Contracts. Its author, Professor Lawson, has long been one of the most widely known legal writers of the United States. The material used in the present volume has been for some time in the process of collecting and represents the intimate acquaintance of the author with a vast number of American decisions at first hand. Such independent work never fails to be worth consulting on a difficult problem and often reveals hitherto overlooked cases.

The book may profitably be read by the law student and with equal profit may be consulted by the practitioner in connection with what we consider a much more important work by the same author and written on the same subject, the title "Contracts" in the Ninth volume of the Cyclopedia of Law and Procedure, pp. 213-786.

There seem to be a few points, however, deserving of criticism in the volume before us.

The author's definition of a contract,

"the agreement of two or more competent persons in proper form on a legal consideration and with their free consent upon a legal subject matter."

(Introduction p. 2), exhibits the tendency, now fortunately flowing with a weaker current than formerly, to analyze every contract in the English Common Law into one group of elements, among which the "Consideration" is given place. Chief Justice Marshall in *Sturgis* v. *Crowninshield,* 4 Wheat. 197, in holding that a promissory note is a contract protected by the Federal Constitution observed that

"A contract is an agreement in which a party undertakes to do or not to do a particular thing."

Mr. Lawson begins his treatise by criticising this definition because there is no mention of the "consideration." The too limited scope of his definition is disclosed when on page 82 he says:

"The formal contract of our law is the *Contract under seal.* It is called a *formal Contract* because it derives its validity from its form alone, and not from the fact of agreement, nor from the Consideration which may exist for the promise of either party."

And Marshall showed the breadth of his common law learning by not defining a contract so as to exclude commercial paper and specialties from the Constitution's protection.

One would infer from the author's discussion of the Statute of Frauds that the Statute applied where the defendant said, "if you will let A have the goods I will see you paid." But clearly these words are not talismanic; they do not preclude the sole liability of the defendant.

In discussing consideration (p. 117) it is said:

"All that is necessary to constitute a valuable consideration is that the *promisor* does or promises to do something &c."

It would have been better to have said "promisee" though the word may be only a typographical error.

The author is rather inclined to shut his eyes to the inadequacy of the doctrines of consideration and to accept sophistical explanations if they emanate from high sources.

"The true theory however of promises of this kind [i.e. to pay a debt barred &c.] is that they do not create new contracts but that they are merely waivers of a personal defense against existing contracts."

But if barred how can the debt exist? And if it exists and it is promised that the defense will be waived what is the consideration for this promise? On the theory of a waiver the balance of a debt after part payment ought to be uncollectible because *waived.*

It would be franker to admit that Commercial expediency outweighed the doctrine of consideration and prevented its application to such cases.

In discussing offer and acceptance by mail Mr. Lawson after citing familiar leading cases draws certain conclusions from which we must dissent:

". . . . that the post office and telegraph are his agents respectively when he [i.e. the offeror] expressly makes them so by requesting a reply by mail or telegraph or when he impliedly makes them so by using these agencies to make his offer, or when the circumstances are such that it must have been within the contemplation of the parties that according to the usages of mankind the post might be used as a means of communicating the acceptance. . . . . ."

In other words the author states that the post-office is the agent of the offeror when the circumstances compel the conclusion that the post might be used by the offeree.

But one of the latest English cases cited by Mr. Lawson, *Henthorn* v. *Fraser* (1892), 2 Ch. 27, repudiates the doctrine of agency. Kay, L. J., saying:

"the decision in *Dunlop v. Higgins,* 1 H. L. C. 381, has been explained by saying that the post-office was treated as the common agent of both contracting parties. That reason is not satisfactory. The post-office are only carriers between them. They are agents to convey the communication—not to receive it."

Mr. Lawson in thus pouring together *Household Ins. Co.* v. *Grant,* 4 Ex. D. 216, and *Henthorn* v. *Fraser,* resembles the cook who to use up everything on hand and avoid waste uses tainted meat and fresh meat to make some fancy dish and hopes that the combination will prove palatable.

The space devoted to the various topics does not seem to be in proportion to their difficulty or the frequency with which cases arise thereunder. Thus the author devotes about one hundred pages to the subject of capacity and only thirty-four

pages to the subject of Consideration, but the chief fault throughout the work is that no reference or direction is given in notes to the student where he can find fuller discussions of the questions left open.

*C. D. H.*

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THE AMERICAN LAW OF REAL PROPERTY. By CHRISTOPHER G. TIEDEMAN, Revised and Enlarged by EDWARD J. WHITE, St. Louis: The F. H. Thomas Law Book Co. 1906. Third Edition. Pp. 1017.

To condense, even within the limits of a thousand pages, the real property law of these United States is a very difficult task and a man deserves credit if he merely makes the attempt. Professor Tiedeman's book, however, is far more than an experiment in this direction; it is the result of a lifetime of painstaking labor and in its present form as edited and revised by Edward J. White, Esq., who was for years the author's pupil, it is a monument of accurate legal scholarship.

There is one feature about the work which is especially pleasing. It is not like so many modern text-books a mere digest of reported cases with brief summaries of the law preceding a wilderness of citations. Instead it is a clear and coherent treatise of the law of real property in general with special notes giving case citations inserted only where they are useful as furnishing sanction and authority for the statements of the text. The main principles of real property law are clearly and succinctly enumerated and they are treated largely from an historical standpoint so that the reader not only knows that a certain rule or principle exists but the reason for its existence.

It always seems a fair test of a book of this kind to examine the manner in which it treats of the famous "Rule in Shelley's Case." On this point Professor Tiedeman says:

"It has long been a rule of common law, that if an estate for life, or any other particular estate or freehold, be given to one with remainder to his heirs, the first taker shall be held to have the fee, and the heirs will take by descent and not by purchase. *The first taker is thereby enabled to make a free disposition of the estate in fee, and the heirs take by descent, only when no disposition has been made of it by the first taker.*"

The italicised portion is indicative of the method of treatment above referred to and very well illustrates it. How often do we read that the famous "Rule" means that where land is devised to a man and his "heirs" the word heirs is a word of "limitation" and not of "purchase." But to the mind of the student at any rate and often to the mind of the lawyer